IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10..11..2005

C O R A M

The Honourable Mr. Justice P. SATHASIVAM
and
The Honourable Mr. Justice S.K. KRISHNAN

Writ Petition No.1227 of 2003

The Commissioner,
Vellore Municipality,
Represented by its Incharge Commissioner
C.S. Pattabiraman,Vellore. .. Petitioner

Versus

1. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104.

2. E.Jambulingam

3. The Director of Municipal Administration
Ezhilagam
Chennai - 5 .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the impugned order of the Tamil Nadu Administrative Tribunal passed in O.A.No.2574 of 1998 dated 09.7.2002 and quash the same.

For Petitioner : Mr. V.Subbarayan
Special Govt. Pleader
For Respondent-2 : Mr.Thirumoorthy for
Mr.R.Saseetharan
For Respondent-3 : Mr.E.Sampathkumar
Government Advocate

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O R D E R

(Order of the Court was made by P. SATHASIVAM, J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 09.7.2002 made in O.A. No.2574 of 1998, the Commissioner, Vellore Municipality, has filed the above Writ Petition.

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2. The brief facts are :

The second respondent, while working as Junior Assistant in the petitioner's Municipality, was entrusted duty under the Rojgar Yojana Scheme during the period commencing from 14.9.1995. During the said period, it was found that a sum of Rs.1,62,700/- was misappropriated for the said Scheme and the second respondent, along with four others, were found to be responsible for the same. Though the amount was collected from the loanees, the same was not deposited into the account of the Municipality. Twelve charges were framed against the second respondent. The Enquiry Officer, based on the questions and answers, submitted the report. Accepting the report, an order was passed on 21.01.1998 removing the second respondent from service. The said order was challenged before the Tamil Nadu Administrative Tribunal in O.A. No.2574 of 1998. By the impugned order dated 09.7.2002, the Tribunal, after finding that there was no proper enquiry and taking note of the age of the applicant at that time, viz., 53 years, passed an order reinstating him into service and further directed that the period of absence shall be treated as duty period with service benefits, but he shall be paid only 50% of the salary and allowance for the said period. To this extent, the Tribunal disposed of the Original Application. Not satisfied with the order, the Municipality has filed the present writ petition.

3. Heard the learned Special Government Pleader for the petitioner, the learned counsel for the second respondent and learned Government Advocate for the third respondent.

4. We have gone through the charge memo dated 29.9.1995. No doubt, as many as twelve charges have been framed against the second respondent. It is seen that though the second respondent denied those charges, an enquiry was conducted and the Enquiry Officer, based on the questions and answers, submitted a report, which was accepted by the original authority, which culminated by an order of dismissal.

5. Learned counsel for the second respondent has brought to our notice that the procedure provided under Rule 8 Sub-rule (2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 has not been followed in this case.

6. A perusal of Sub-rule (2) of the above Rules makes it clear that an elaborate procedure has been provided. As rightly pointed out by the Tribunal, the Enquiry Officer has not followed the procedure as prescribed in the Rules. We are satisfied that in such circumstance, the Tribunal is fully justified in finding that there was no proper enquiry in terms of the Rules and accordingly, is right in setting aside the order of the original authority. No

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doubt, as pointed out by the Tribunal, the proper course is to remit the matter to the Municipality for fresh enquiry. However, taking note of the fact that the charges relate to certain commissions and omissions, which have taken place in 1993 and the main allegation against the applicant/second respondent is failure to supervise the persons concerned in charge of the accounts/money, the Tribunal passed an order foregoing 50% of his salary for the period of absence. Considering all these aspects, we are of the view that at this juncture, it would not be desirable to permit the Municipality to conduct fresh enquiry. It is also brought to our notice that the second respondent is going to be superannuated within a period of one month.

7. In the light of the above factual position and in view of the fact that there is a clear procedural flaw in conducting the enquiry, we are in agreement with the conclusion arrived by the Tribunal. There is no ground for interference. The Writ Petition fails and the same is dismissed. No costs.

gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner,
   Vellore Municipality,
   Vellore.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104.

3. The Director of Municipal Administration
   Ezhilagam
   Chennai - 5

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+1cc to Mr.R.Saseetharan,Advocate(SR.44808)
+1cc to Mr.V.Subbarayan,Advocate(SR.44928)

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